

## **REMARKS**

**I. Claims 1-18 and 40 were pending at the time of the October 19, 2005 office action.**

Claims 14-18 are allowed.

No claims are amended herein.

Claim 40 is withdrawn.

Claims 19-39 are cancelled.

Claims 1-18 are now pending.

**II. Claim Rejections Under 35 U.S.C. § 103**

**A. Raque, Koziel, and Williams**

Claims 1-4 and 13 are rejected under § 103 as being unpatentable over either Raque ('349) or Raque ('621) (collectively Raque) in view of Koziel et al ('865) and Williams. The Applicant respectfully traverses this rejection.

Claim 1, from which each of the other rejected claims depends, specifies using a phenotypic marker of seed coat color and that the different plant varieties should have one or more natural seed coat color differences from the dominant seed coat color. On the other hand, the cited references do not suggest using natural differences in seed color to identify transgenic seeds. Instead the motivation in Raque and Koziel is to make the seed stand out as much as possible from the normal seed color, not to use natural differences to identify transgenic seed. Raque and Koziel motivate one to make the transgenic seed color unnatural so that it can be identified. Clearly there is no motivation in Raque and/or Koziel to combine either or both with a reference such as Williams.

Raque teaches dyeing, which creates colored seeds where the altered color will not be inherited in progeny. Its use in identifying transgenic seed would be impossible in the generation of plants grown from the dyed seed. Accordingly, it would be pointless to attempt to use Raque as part of a system for detecting whether, for example, a farmer is selling grain to an elevator as

non-transgenic when in fact that grain was produced by plants grown from seed containing genetically modified traits, which is one of the purposes of the invention.

Furthermore, Koziel would not be useful in such a system for identifying transgenic seed because farmers could simply pick out the colored seed before planting it to avoid the detection of their transgenic crop. If the teaching of the instant application were used, however, then picking out the colored seed would inevitably miss the heterozygotes and therefore the recessive color trait would reappear in subsequent generations and expose farmers attempting to pass off grain produced from seed having genetically modified traits as non-transgenic.

For all these reasons, the Applicant respectfully submits that the Examiner's rejection of claims 1-4 and 13 under § 103 is overcome.

**B. Raque, Koziel, Williams, and Wright**

Claims 5-12 are rejected under § 103 as being unpatentable over Raque, Koziel, Williams and Wright. The Applicant respectfully traverses this rejection for substantially the same reasons for which the Applicant traverses the previous rejection.

Whether one would be motivated to use NIR spectrophotometry to sort the seed of the present invention does not change the fact that Raque, Koziel, and Williams do not teach or suggest each of the limitations of claim 1 of the instant application from which claims 5-12 depend. For all these reasons, the Applicant respectfully submits that the Examiner's rejection of claims 5-12 under § 103 is overcome.

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In light of the above amendments and remarks, the Applicants respectfully submit that all outstanding objections and rejections are overcome.

The Examiner is encouraged to call the undersigned should any further action be required for allowance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Pat Kammerer', written in a cursive style.

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